

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint No. : 268 of 2018**  
**First date of hearing: 14.05.2018**  
**Date of Decision : 20.09.2018**

1. Mr. Rohit Ahuja R/o 315-R, Model Town,  
Panipat, Haryana
  2. Mr. Rippen Ahuja R/o 315-R, Model Town,  
Panipat, Haryana
- ...Complainant**

Versus

M/s EMAAR MGF Land Limited,  
Mehrauli-Gurugram, Road, sikandpur Chowk,  
Sector 28, Gurugram

**...Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Pardeep Sharma Advocate for the complainant  
Shri J.K. Dang Advocate for the respondent  
Shri Ketan Luthra Legal representative of  
respondent

**ORDER**

1. A complaint dated 14.05.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Rohit



Ahuja and Mr. Rippen Ahuja against the promoter M/s EMAAR MGF Land Limited. on account of violation of clause 10(a) of the buyers agreement executed on 25.04.2012 in respect of Unit No. PGN-02-501, 5<sup>th</sup> Floor, Sector - 83, Gurgaon described as below for not handing over possession on the due date i.e. by 27.02.2016 which is an obligation under section 11(4)(a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Palm Gardens
2.	Unit no.	501, 5 <sup>th</sup> floor, building No. 2, sector -83, Gurugram
3.	Total consideration	Rs. 1,16,55,026.72/-
4.	DTCP license no.	108 of 2010
5.	Registered / not registered	Registered
6.	Total amount paid by the complainant	Rs. 1,10,17,929/-
7.	Date of agreement	25.04.2012
8.	Date of delivery of possession. As per the agreement from the start of construction i.e. 30.11.2012	Clause 10(a) 36 months+3months from commencement of construction i.e. 27.02.2016
9.	Delay of number of months	2 year 6 months
10.	Penalty Clause as per clause 12 builder buyer agreement dated 25.04.2012	Rs. 7.50/-per sq. ft. per month till the date of notice of possession



3. As per the details provided by the parties in the complaint and the reply, the developer/promoter was bound to deliver the possession of unit no. 501, 5<sup>th</sup> floor. The promoter has

failed to deliver the possession of the said unit to the complainant by the due date as per apartment buyer agreement dated 25.04.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 27.06.2018. The case came up for hearing on 27.06.2018 and 20.09.2018. The reply has been filed by the respondent.

#### **Facts of the Complaint**

5. That the Respondent had been proclaiming in public through newspaper advertisements, marketing emails and telemarketing that they had launched an integrated residential township in Gurugram. The said integrated township as claimed is being set up after necessary approvals of all the competent authorities. It was further claimed that all the necessary approvals, clearances and procedures had been duly obtained and sanctioned about the proposed integrated township and further proclaiming that the location of such site, which is under development, was prime land and centrally located. The complainants booked a flat in the project, namely 'Palm Gardens' situated at Sector-83, Village Kherki Daula, Tehsil & District Gurugram, Haryana, for an amount of Rs.1,12,80,238.80/- and service tax amount to Rs. 3,74,787.92/- was payable. Thus, the total cost of the Flat (as mentioned in the Buyer's Agreement dated 25.04.2012) was Rs. 1,16,55,026.72/- flat



bearing Unit No. 501,5<sup>th</sup> floor ad-measuring 159.79 Sq. Mts. (1720 sq. ft. approx). was allotted to the Complainants.

6. Thereafter, a buyer's agreement was executed between the respondent and the complainants on 25.04.2012 at Gurugram. According to the buyer's agreement dated 25.04.2012, the possession of the flat was to be handed over within 36 months from the date of start of construction with a grace period of 3 months.
7. That in clause no. 12, of the buyer's agreement dated 25.04.2012 it was mentioned that in case of delay in handing over the possession to the allottee, the allottee(s) shall be entitled to compensation for delay @ Rs. 7.50/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 3 months till the date of notice of possession. Further under clause no. 13 of the aforesaid agreement, it was mentioned that if the allottee failed to take the possession, the developer shall charge the holding over charges @ Rs. 7.50/- per sq. ft. of the super area of the Unit per month and further interest @ 24% per annum on the amount due shall also be charged till the date of the payment.
8. That since it was construction linked payment plan, therefore, the complainants continued to make the payments towards the sale consideration as per the demands raised by respondent from time to time. Whenever there was delay, the respondent charged the interest @ 24%



per annum over the delayed payments and the same is also reflected in the statement of account.

9. It was the duty of the respondent to intimate in writing the date of start of construction; however, the respondent failed to intimate the complainants in this regard. The schedule of payment was construction linked and the fourth instalment was to be paid on completion of 1st basement roof slab. On the demands raised by the respondent, the complainants had been making payments of the amount. The demand of Instalment on completion of 1st basement roof slab was made on 04.02.2013
10. As prior to laying basement slab excavation, constructing of foundations, concreting of columns and slabs are required for which a minimum period of 6 months is required, accordingly the date of start of construction is taken as 01.09.2012. Therefore, the possession of the apartment was required to be offered to the complainants on or before 31.08.2015. Even the period of 3 months for applying and obtaining the completion certificate/occupation certificate expired on 30.11.2015, however, till date, to the Knowledge of the complainants the respondent has failed to get any certificate in this respect.
11. That the buyer's agreement has been drafted in such a manner, which is beneficial for the respondent and prejudicial to the interests of the complainants. For delay in handing over the possession according to clause no. 12, only a sum of Rs. 7.50/- per sq. ft. per month of the super



area has been mentioned as compensation whereas if the allottee fails to take the possession of the apartment then according to condition No. 13, the allottee is required to pay the holding over charges @ 7.50/- per sq. ft. of the super area and also interest @ 24% on the due amount as mentioned in the notice for possession. The respondent is legally bound to compensate the complainants for the delay in handing over possession of the flat in question at the same rate, which the respondent would have otherwise charged the complainants that is to pay the holding over charges @ Rs 7.50/- per sq ft. of the super area and also interest @ 24% on the due amount till the time the possession of the flat in question is handed over to complainants.

12. The possession is to be handed over to the complainants within the stipulated period, the complainants would have been using the flat in question for her personal requirements which is why the complaint continued to make, rather forced, to make the payments as per the demands made by the respondent despite the fact that the respondent was not adhering to the schedule of construction and was more interested in fleecing the complainant. According to the statement of account, as on 06.06.2017, the Complainants have paid a sum of Rs. 1,10,17,929/-.

13. The complainants have been made to pay for the super area of the flat which also covers the area which a



builder/developer cannot charge from the allottee. As per annexure IV of the buyer's agreement dated 25.04.2012 the area of the apartment is 80% of the super area. It has also been mentioned in the same annexure that the ratio of apartment area to the super area may undergo change till the completion of the building/project. In such circumstances it has become difficult for the complainants to decipher as to how much of the excess amount has been charged by the respondent for the area for which the respondent cannot otherwise charge with from the complainants. The respondent is under statutory obligation to disclose the carpet area and refund the amount taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016.

#### **ISSUES RAISED BY THE COMPLAINANTS**

- i. Whether the promoter was under legal obligation to hand over the flat in question in terms of the buyer agreement dated 25.04.2012? If the same has not been done, then what is the effect?
- ii. Whether the promoter is liable to pay charges @ 7.50/- per sq. ft. of the super area that is 2000 sq. ft. and also interest @ 24% on the amount of Rs. 1,10,17,929/- w.e.f. 31.08.2015?
- iii. Whether the promoter is liable to disclose the carpet area of the flat in question and refund the proportionate



amount taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016?

- iv. Whether the complainants are entitled for grant of compensation of for inconvenience, mental harassment and damages suffered by complainants due to deficiency in service on the part of the respondent? If so, then what is the quantum?

**RELIEF SOUGHT:**

- i. To Direct the respondent to hand over the possession of the Flat Bearing Unit No. 501 admeasuring 159.85 sq. mtrs. (1720 sq. ft. approx.) in the project namely 'Palm Gardens' situated at Sector 83, Village Kherki Daula, Tehsil & District Gurugram, Haryana, immediately.
- ii. Direct the respondent to pay charges @ 7.50/- per sq. ft. of the super area that is 2000 sq. ft. and also interest @ 24% on the amount of Rs. 1,10,17,929/-w.e.f. 31.08.2015, till the time the possession of the flat is handed over to the complainants;
- iii. Direct the respondent to disclose the carpet area of the flat in question and refund the proportionate amount taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016;





## REPLY

14. The respondent submits that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for the rejection of the complaint on the ground of the jurisdiction and this reply is without prejudice to the rights and contention of the respondent contained in the said application. The claims have been made in a manner unknown to the common law of contract and are specifically contrary to the text of the Indian contract act,1872 itself.
15. The respondent submits that as per applicable act and rules a complaint may be filed by a person only if the respondent has committed any act in violation of the real estate Act, 2016 as the complaint has failed to bring on record any document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of the Act and the complaint has no locus standi.
16. The respondent submits that section 19(3) of the said Act provides that an allottee shall be entitled to claim the possession of the apartment, plot or building, as per the declaration given by the promotor under sub - clause (C) of clause (L) of sub section 2 of section 4.the respondent had made a declaration in terms of section 4 (2)(L)(C) that it would complete the project by 31.12.2018. It is submitted that Palm Garden project at sector- 83, Gurgaon is covered under the definition of "ongoing projects" and registered with this hon'ble regulatory authority.



17. That no cause of action can be said to have arisen to the complainant in any every to claim interest and compensation as sought to be claimed by it.
18. The respondent submitted that the complaint is not supported by an attested affidavit and as such the complaint is without proper attestation and cannot be read as legal pleading.
19. The respondent submits that the complainants have not come to this hon'ble authority with clean hands and have concealed material facts. The complainants have failed the inform the hon'ble authority that the oriental bank of commerce has a lien over the subjected property and the present complaint cannot be continued behind the back of OBC as they are necessary and proper party for adjudication of the case.
26. The complainant has filed the complaint and seeking the relief for possession and compensation is maintainable only before the adjudicating officer.
27. Further the complainants are not consumer in terms of definition of consumer under Consumer Protection Act, 1986.
28. The respondent submits that the complainants are clearly an investor, the fact that Smt. Shalini Ahuja wife of Mr. Rippen Ahuja has applied for and has been provisionally allotted Unit No. PH4-31-0902 in Palm Hills project of the respondent. It is a matter of record that Smt. Shalini Ahuja



has filed separate complaint no. 265/2018 pertaining to unit no. PH-4-31-092 in Palm Hills Project, Gurugram is pending before the authority. Mr. Rippen Ahuja is the co-applicant in instant case. The complainants are clearly investors having invested with a view to earn quick profit but due to the sluggishness in the market conditions, they might have failed to resell the said unit, and have now raised false issues to engage the respondent in unnecessary litigation.

29. The respondent submits that it is a well settled law established by the Hon'ble Supreme Court of India, that booking of more than one unit falls within the definition of investor.
30. The respondent submits that there is a delay in handing over of possession of the unit to the complainants and the company was liable to hand over possession of the said unit on or before 31.08.2015. On the point of construction and the time line of handing over the possession of the unit, it is relevant to mention that it had been categorically conveyed to the complainant that the company would endeavour to complete the project and hand over the possession of the unit booked, as expeditiously as possible, subject to the reasons beyond the control of the company, as also subjected to the terms and condition contained in the buyer agreement. Being law abiding company, possession of a unit can only be handed over once all the statutory permission/ approvals have been obtained.



31. The respondent submitted that the project in question is a large project and such kind of projects do take reasonable time for completion. This position is fortified from the fact that the parties had envisaged a compensation clause in the application form/ buyers agreement in case the company was not able to handover the possession within 36 months from the date of start of construction and conditions of buyer's agreement.
32. Further the application form cannot be read in a piecemeal manner. The complainants cannot pick and choose clause that they like and leave the other clauses behind. Also, successful implementation and completion of development project depends upon the fulfilment of payment obligations by all the allottees, who are under a contractual obligation to make payments on time. Delayed payments such as by the complainants have an adverse impact on the project deliverables.
33. The respondent submits that the complainants are defaulters and deliberately fail to make payments of instalments within time, which results in delayed payment charges as reflected in statement of accounts. The respondent has also send several reminders to make the payments, but the complainant failed to make payment on time.
34. The respondent submits that from the date of booking till filing of present complaint the complainants never ever raised any issue whatsoever. As a matter of fact, the



respondent carried out customer satisfaction survey when Mr. Rohit Ahuja categorised various parameters of service as excellent.

35. That the respondent submits that despite advertise and on payment by the various allottees, the respondents is in the process of completing the construction of the project and should be able to apply for OC for apartment in question by 31.12.2018.

### PROPOSED ISSUES

- i. Whether this hon'ble authority has any jurisdiction to entertain the present complaint.?
- ii. Whether the provision of real estate Act, 2016 are applicable in the facts and circumstances of the cases?
- iii. Whether the present complaint is maintainable qua the respondent?
- iv. Whether the complainants were defaulted in performance of their obligation under the buyer agreement executed between the parties?
- v. Whether the complainants are entitled to get handover of possession immediately without making complete payment for the same as per the buyer 's agreement.
- vi. Whether the complainants can demand compensation and interest without making complete payment for the same as per the buyer's agreement.
- vii. Whether the complainants are entitled to compensation for alleged mental agony and harassment.



- viii. Whether the complainants is entitled to any other relief.

### DETERMINATION OF ISSUES

36. In respect to first issue as per the clause 10(a) of the buyer's agreement the promoter is liable to hand over the possession of the said unit within 36 months plus 3 months grace period from the start of the construction. Therefore, the due date of handing over the possession is 27.02.2016 from the start of construction i.e. 30.11.2012. The respondent has failed to deliver the possession of the said unit within the due date of handing over the possession. The clause regarding the possession of the said unit is reproduced below:

***"10(a) offer of possession***

*...the Developer proposes to handover the possession of the said flat within period of (36) Months with grace period of 3 Months, from the start of construction....."*

37. In respect to the second issue raised by the complainants, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his*



*business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

38. Accordingly, the due date of possession was 27.02.2016. The delay compensation payable by the respondent @ Rs.7.5/- per sq. ft. per month of the super area of the said flat as per clause 12 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*



39. In respect to third issue raised by the complainants that as per the agreement the clause regarding the disclose of the carpet area not be ascertained in the agreement and there is no documentary proof has been submitted by complainant regarding the carpet area. So, the authority has no jurisdiction to entertain the present issue.

40. In respect to the fourth issue raised by the complainant, the authority has no jurisdiction to entertain the present issue regarding the compensation, as the complainant shall make separate application before the adjudicating officer under section 71 read with rule 29 of Haryana Rules, 2017

41. As the possession of the flat was to be delivered by 27.02.2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

**“11.4 The promoter shall—**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*





*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

42. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority –**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

43. The complainants requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

44. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the



adjudicating officer if pursued by the complainant at a later stage.

45. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment number 501, 5<sup>th</sup> floor, building No. 2, Sector -83 , Gurugram to the complainant by the committed date i.e. 27.02.2016 as per the said agreement and the possession has been delayed by 2 year 6 months till the date of decision. Thus, the complainants are entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

#### **Decision and directions of the authority**

46. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:
- The respondent is directed to give interest @ 10.45% for every month of delay from the due date of possession i.e. 27.02.2016 till the handing over the possession.
  - The respondent is directed to pay interest accrued from due date of possession i.e. 27.02.2016 to the date of decision i.e. 20.09.2018 to the complainants within 90 days from the date of decision and subsequent interest



to be paid by the 10<sup>th</sup> of every succeeding month till handing over the possession.

47. The order is pronounced.
48. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2018

HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 20.09.2018
Complaint No.	268/2018 Case titled as Mr. Rohit Ahuja V/s M/s EMAAR MGF Land Ltd.
Complainant	Mr. Rohit Ahuja
Represented through	Shri Pradeep Sharma, Advocate for the complainant.
Respondent	M/s EMAAR MGF Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative on behalf of the respondent-company with Shri J.K.Dang Advocate.
Last date of hearing	11.9.2018
Proceeding Recorded by	

**Proceedings**

Arguments advanced by both the counsel for the parties heard.

The main question agitated by the counsel for the complainant is w.r.t. date of commencement of construction. The complainant was allotted a flat by the respondent on 05.04.2012 and Builder Buyer agreement was executed between the parties on 25.04.2012 and the due date of possession was 27.5.2016 from the date of commencement of construction i.e. 27.2.2013.

There is a controversy between the parties about the actual date of start of commencement of work and the margin of time between the parties

is just three months only. Keeping in view the fact that the roof slab of first basement was completed on 27.02.2013 and with the consent of the counsel for the parties, the date of start of construction is taken as 30.11.2012 and this date is treated fairly for the date of start of construction which is agreed to by both the parties. Accordingly, the complainant is entitled for interest w.e.f. 27.2.2016 at the prescribed rate of interest i.e. 10.45% to be paid by the respondent to the complainant till handing over of possession.

The arrears accrued so far shall be paid within 90 days from the date of passing of this order and then monthly payment of interest shall be paid before 10<sup>th</sup> of subsequent month till handing over the possession. The complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
20.09.2018